Supreme Court, U.S.
FILED
JUL 6 1998
OFFICE OF THE CLERK

NO. 98 75

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IN THE
SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1998

DANIEL R. THOMAS
Petitioner

versus

STATE OF OREGON
Respondent

PETITION FOR WRIT OF CERTIORARI
TO THE
SUPREME COURT OF THE STATE OF OREGON

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# PETITION FOR WRIT OF CERTIORARI

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## QUESTIONS PRESENTED FOR REVIEW

1. Did the Oregon Supreme Court err when upholding a ruling in Oregon Tax Court which declared 26 USC 83 inapplicable to Petitioner's compensation, but which diametrically opposed the ruling of six federal Circuits that say the exact opposite?

2. Did the Oregon Supreme Court err when upholding penalties against the Petitioner for his good-faith reliance upon the plain text of applicable federal statutory and regulatory provisions?

3. Did the Respondent violate Petitioner's rights to due process, guaranteed under the Fifth Amendment to the U.S. Constitution, by depriving the Petitioner of the provisions of 26 USC §§ 83, 212, 1001, 1011 and 1012?

4. Did the Oregon Supreme Court err when upholding a decision against the Petitioner that relied upon findings of liability of an IRS auditor who admitted under oath that her conclusions were in complete disagreement with the pre-existing conclusions of the Chief of the Internal Revenue Service's Compliance Division who informed the Petitioner that, upon consideration of his query into the operation of 26 USC 83, Petitioner was not legally required to file a tax return, and, *a fortiori*, he received no gross income?

5. Did the Oregon Supreme Court err when upholding a decision against the Petitioner wherein it admitted at length that the tax is hardly imposed by clear and unequivocal language?

6. Since this controversy revolves solely around interpretation of federal statute, and since Petitioner's claims have been pursued in federal courts by others for years with sanctions instead of discussion—claims that appear exceedingly delicate for any court into which they are brought—is the public not better served by this Court's determinations concerning Petitioner's issues of focus as opposed to this case being remanded to the Oregon Supreme Court for further adjudication?

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## IN THE
## SUPREME COURT OF THE UNITED STATES

## OCTOBER TERM, 1998

## PETITION FOR WRIT OF CERTIORARI

Daniel R. Thomas, Petitioner herein, respectfully prays that a writ of certiorari issue to review the judgment below.

## OPINIONS BELOW

This petition comes from the Oregon Supreme Court. Its decisions appears at Appendix A to the petition.

The Oregon Supreme Court's decisions were in consideration of the Oregon Tax Court's Order and Judgement concerning the issues in this petition (and others dropped from this action to simplify and diminish the pursuit of answers due the Petitioner). Said decisions are also in Appendix A attached hereto.

## JURISDICTION

The date which the Oregon Supreme Court decided the case was February 12, 1998.

A timely-filed Petition for Reconsideration was denied by the Oregon Supreme Court on April 7, 1998, and a copy of the Order denying said Petition appears in Appendix A.

This Court's jurisdiction is invoked under 28 USC 1257.

## STATEMENT OF THE CASE

This case is nearly a photograph of a case docketed in this Court in July of 1997 (see Talmage v. C.I.R., #97-5299) wherein the operation of 26 USC 83 was the focus of the controversy. In that case, Stephen Talmage was penalized $6,500.00 by U.S. Tax Court simply for offering: "I will concede all facts of the case today if they'd just tell me how to comply with Section 83." In said case, Tax Court did concede that the deductible cost of the laborer is calculated under 26 USC 1012, but then refused to identify the requisite statutory text that justified the exclusion of labor from that cost. In that case, the Ninth Circuit upheld Tax Court's penalties even though earlier the Fourth Circuit, in McCall v. C.I.R., (#96-5871, this Court, cert. denied), viewed Tax Court's imposition of penalties as a fundamental error or miscarriage of justice.

In the instant case, Petitioner was required to pay an erroneous assessment of $5,700.00 in order to obtain administrative review of what turned out to be an audit not personally conducted by the Respondent. Upon review in Oregon Tax Court, Petitioner raised statutory issues under federal provisions repeatedly held to be applicable to *all compensation for services*, and a challenge against the use of prior decisions regarding tax liabilities. Each and every provision relied upon being federal legislation adopted as Oregon State law for the calculation and imposition of state income tax (see Oregon Revised Statutes § 316.007).

In complete contradiction to rulings made by six different Circuit Courts regarding the applicability of 26 USC 83 to any and all compensation for services, Oregon Tax Court ruled that said statute is inapplicable to Petitioner's compensation for services. Said court further ignored the flaws in such interpretation of federal statutory and regulatory language pointed out by the Petitioner.

In determining Petitioner's tax liabilities, Oregon Tax Court

excluded from cost certain property embraced as cost under federal statute and regulation. This exclusion is the sole basis for the taxation of the Petitioner's compensation. Said court refused to identify the requisite statutory and regulatory language that such property be so excluded, and went on to impose a fine upon the Petitioner of $5000.00 simply because he asked the court to declare what the plain text of the law is.

In a follow-up Opinion dated 2/12/97, the Oregon Tax Court actually went to great lengths to admit that the tax in controversy is hardly imposed by clear language, going so far as to quote former Oregon Supreme Court Justice Learned Hand who gave dissertation on the confoundation rightly experienced by even the professional who attempts to interpret laws governing taxation. This despite the vast multitude of decisions from this Court cited by the Petitioner that say that the Citizen is always to be given leave whenever the tax is not imposed by clear and unequivocal language. Oregon Tax Court placed the Petitioner and his controversy plainly within that category and then went on to impose penalties anyway. This act is either just, or it is one intended to allow the Respondent to violate the binding decisions of this Court and to violate the rights of the Petitioner to due process and to equal protection.

In Oregon Tax Court, local IRS agent "Patricia Wakefield" was called to the stand to give testimony as to the affairs of the Petitioner. In her audit of Petitioner's affairs, she committed perjury and fraud. In her audit, over which the Respondent spilled much praise and acalades as having done a superb job in her duties, Ms. Wakefield intentionally ignored eleven checks totalling $57,000.00; these checks being Petitioner's contributions to a KEOGH retirement plan—payments for which Petitioner is legally entitled to receive consideration and a reduction in his alleged liabilities. Petitioner immediately brought this to the attention of the Oregon Tax Court, yet said court refused to address the matter. Respondent's stamp of

approval on the illegal behavior of Ms. Wakefield proves outright that the Respondent never conducted an audit of its own, choosing rather to rely upon the false information provided by IRS agent Ms. Wakefield.

During testimony, Petitioner brought to the attention of Ms. Wakefield the fact that the Internal Revenue Service's highest authority on compliance (Timothy Towns, Chief, IRS Compliance Division) had previously determined and informed Petitioner in writing (Letter 2358C) that, based solely upon the issues raised herein, he is "not legally required to file a tax return." Under the plain language of 26 USC 6012(a)(1)(A), this can only mean that Petitioner was determined to have no tax liability because he received no income beyond the exemption amount of $400.00 upon which income tax could be imposed. After reading the determination of Mr. Towns, Ms. Wakefield admitted under oath that Mr. Towns is a superior officer to herself, yet she admitted that her own determination of liability was completely contrary to the release of the Petitioner from federal requirements given by Mr. Towns, the Internal Revenue Service's single-highest compliance specialist.

Oregon Tax Court ignored the determination of the IRS Compliance Chief and pressed on, even though the years to which said correspondence applied were common with this controversy, or were years during which Petitioner's gross receipts were derived from identical activities.

In apparent desperation, Oregon Tax Court actually ruled that Petitioner's labor is not his property. When a court must run this far to exclude certain property from consideration as cost, due process required a complete examination of all criteria upon which it relied to impose or exact a tax that diminished Petitioner's right to property.

The Oregon Tax Court may as well have said: "The court cannot identify the clearly-established law contradicted by the Petitioner's inclusion of his personal services in his cost, but it feels free

to penalize the Petitioner for not being able to do so himself. The court cares not how many federal appeals courts have held 26 USC 83 applicable to any and all compensation. The Oregon Department of Revenue is not required to make their own determinations of liability, but rather may rely on the perjured testimony of a federal agent. Decisions of the United States Supreme Court are not binding in Oregon. Labor is not property. The court, and not the text of the law, determines what is and what is not cost. The court cares not what the Petitioner's liability is as determined by the the IRS' Chief of Compliance. Oregon will simply get its money from the Petitioner anyway."

In the Oregon Supreme Court, Petitioner received worse treatment similar to that in the Oregon Tax Court. The Oregon Supreme Court simply passed on each and every issue and proclaimed that no American would be served by adjudication of said issues. Apparently Oregonians would not be served by learning the intent of applicable provisions, by having their state tax department conduct its own audits, by knowing whether or not a federal statute adopted into state law applies to the individual who sells his labor, by being able to arrange their own affairs according to the law, by avoiding sublimely-incompetent government employees who will require massive sums to pay a plainly-erroneous assessment, or by learning how to stay within the text of the law. The Oregon Supreme Court also endorsed the lower court's imposition of $5,000.00 upon Petitioner for his having failed to identify the requisite statutory or regulatory exclusion from cost of property within which he has no basis, even though no other party or court can do likewise.

Either a multitude of decisions from this Court are duly overturned by the decisions described above, or review is necessary to affirm them. Although issues arising out of occurrences in the lower courts are many, and each are deserving of close scrutiny, in the interest of judicial economy, Petitioner has placed them all aside in

favor of his core issue from the onset of this controversy: that of the operation of 26 USC 83.

## COMPELLING REASONS TO HEAR THIS CASE

Petitioner is but one of many Americans now pursuing the issue of focus herein, that being the operation of 26 USC 83 adopted by the Oregon State Legislature as State law for the imposition of state income tax. Throughout nearly five years of litigation on every federal level and on the state level, the operation of 26 USC 83 has remained a closely-guarded secret. While knowing that the refusal to address the operation of the statute leaves the Citizen without the requisite information necessary to exercise his right to arrange his own affairs under the law, all judicial officers have displayed only disdain and disgust for those seeking an interpretation of a provision repeatedly held to apply to any and all compensation for services.

Prior to the commencement of any action, or before being forced into court by a taxing agency of a State or the Federal Government, there is administrative exchange or interaction. It is the administrative response to questions of a legal nature that has the Petitioner in court in the first place. Agency-level operations require that questions about the law are only available in court where you can be fined for asking and receive no answers. Upon presenting the section-83 argument and questions for review, the Citizen is routinely ignored and then penalized thousands of dollars for raising issues concerning applicable provisions that the IRS cannot deny, and that alter the amount of revenue raised through income-taxation. The following U.S. Tax Court docket numbers are those wherein the same statutory issues were met with unjustified monetary sanctions:

#11315-94 Chris Bernsdorf was penalized $1,000.00.

#15685-94 Susan Eckles was penalized $3,000.00.

#3176-95 Robert and Mauris Justice were penalized $3,750.00.

#1610-95 Richard and Pamela Bryan were threatened with penalties.

#8766-95 William Santangelo was penalized $2,500.00.

#339-95 Stephen Talmage was penalized $6,500.00. (Talmage was docketed in this Court in 1997—see #97-5299—but procedural difficulties due to personal problems derailed his review.)

On appeal to the Ninth Circuit, Santangelo, already a victim of unconscionable monetary sanctions imposed by Tax Court, was fined an additional $2,000.00 simply for his reliance upon applicable provisions (see Ninth Circuit, Santangelo, #95-70866).

In Seattle, Washington, two petitions for judicial review under the Administrative Procedures Act (5 USC 701-706) were dismissed. These petitions raised the section-83 argument and simply asked for answers about how the interpretation herein is fatally flawed. Federal District Court Chief Judge Barbara Rothstein ruled that the Anti-Injunction Act (26 USC 7421) and sovereign immunity of the United States Government precluded the Citizen from gaining knowledge of fundamental and controlling statutory provisions (see Justice, #C95-1001R and #C95-1246(C)R).

On a national level, and in the Petitioner's case in Oregon State courts, tax law has proven to be some taboo better left out of sight of the public. There is a tendency in the federal judiciary, and in the agencies and courts of Oregon, to sanction those who seek access to the law most germane to one's successfully and lawfully arranging his own affairs. If Petitioner is wrong, then why can't the reviewing court simply speak of the plain language of applicable provisions to clarify the basis for its contradiction of the Petitioner? Why the civil carnage, why the secrecy, why the oppression?

In his belief that this institution holds that keeping the law a secret under threat of sanctions is patently wrong and un-American, Petitioner is compelled to reach out to this Court for justice. This Court, in U.S. v. Lopez, 514 US 549 (1995), citing Marbury v. Madison, 1 Cranch. 137, 177, 2 L.Ed 60 (1803) said: "Congress has operated within this framework of legal uncertainty since this Court determined that it is the judiciary's duty 'to say what the law is.'" Having relied solely upon applicable federal provisions for his issues of focus, Petitioner is, perhaps out of naiveté, quite shocked at the Oregon Supreme Court's outright refusal "to say what the law is."

If Petitioner is right and this case is not heard, what are the excuses? If this case is heard, an obvious and inherent pattern of abuse and intentional oversight will finally be stemmed and the law will again belong to the Citizen.

## NATIONAL IMPORTANCE OF ISSUES RAISED

In addition to those points outlined above, great import is found in the context of Petitioner's statutory claim for property protection. It is the loss of revenue feared most by those who have oppressed the individuals who have made similar claims. The act of excluding from consideration as a cost that property within which one has no basis, such as labor, is clearly contrary to the requisite language of statute and regulation, but this exclusion is the very foundation of the taxation of the fair market value of services rendered by the individual. Under the law, this makes America a country where the law is intentionally misenforced in order to take the property of the Citizenry, a country where the government's budget is of bigger importance than the rights of the individual to freely labor or access the law.

In America, now without question, every individual can ex-

pect to be penalized thousands of dollars for simply asserting that "the value of any money or property paid" (see 26 CFR 1.83-3(g)) does not exclude sacred property such as labor, that "cash or other property" (see 26 CFR 1.1012-1(a)) does not exclude property, such as personal services, within which one has no basis. Accompanying the sanctions was silence. There was no explanation or discussion of other controlling provisions or misunderstood axioms of income taxation. The plain text of the law clearly embraces as a cost such property, but a secret unwritten axiom is imposed upon the laborer.

If this is deemed to be an acceptable American condition or standard, then national importance is nonexistent. However, if this is not tolerable under the institutions that make up America, then there is no time like the present for this Court to make such a declaration.

## WHY THE LOWER COURT'S DECISION IS ERRONEOUS

The Oregon Supreme Court did not make a decision other than to let the Oregon Tax Court's decision stand, rather than lift the veil of secrecy receiving endorsement there. The Oregon Supreme Court let stand not only tax court's admission that the tax is not imposed the requisite clear-and-unequivocal statutory/regulatory language, but also its penalty for the Petitioner's failure to identify the provision relied upon by the Respondent to lawfully exclude from cost the Petitioner's personal services (a provision that even the Respondent cannot identify). Despite the Petitioner's having cited a plethora of decisions from this Court that have consistently held that such doubt is always to be resolved in his favor, the Oregon Supreme Court endorsed tax court's sanction. This is a fundamental error and miscarriage of justice.

The Oregon Supreme Court upheld tax court's determination that 26 USC 83 does not apply to Petitioner's compensation, in di-

rect contradiction of U.S. Tax Court decisions, and decisions on six of eleven federal circuits. There is not one single case to support the exclusion of monetary compensation (i.e., "money") from the purview of the statute, and the Respondent's interpretation of regulation used to justify said exclusion violates clearly-established federal law (26 CFR 1.83-3(e) states that "property" includes things other than money, and the Respondent reads "includes" here to be a term of limitation that excludes "money" from the definition of the term "property" for the purposes of 26 USC 83, but this clearly violates 26 USC 7701(c) which prohibits the term "includes" from being so read).

The Oregon Supreme Court erred when it chose not to address the fact that the Respondent conducted no audit of its own of Petitioner's affairs, that the Respondent merely permitted the IRS to conduct an audit upon which the Respondent relied. Said IRS audit was heralded by the Respondent as one of which we can all be proud for its thoroughness and for its accuracy. This despite the fact that the IRS auditor intentionally omitted from account eleven checks totalling $57,000.00 which were deposited into a deductible KEOGH retirement account and, so as to enhance the amount of tax imposed, while under oath, testified that Petitioner did not make said retirement-account contributions. Even after the Petitioner provided copies of said checks, the Oregon Supreme Court's refusal to address this is clearly a fundamental error and miscarriage of justice. The Respondent was permitted to enjoy the presumption of correctness and to forget all about accountability.

The Oregon Supreme Court let stand tax court's refusal to address the language of 26 USC 83. Said refusal is cloaked in tax court's ruling that the statute is inapplicable to Petitioner's compensation. However, with or without this statute, Petitioner may simply rely upon and apply the language of 26 USC 1012 ("Basis of Property—Cost"; a provision voiced in U.S. Tax Court's Order of 3/11/96 in Talmage, supra, and supplied to both Oregon courts dur-

ing adjudication). The language of § 1012's implementing regulations also embrace Petitioner's services as a cost, and the statute needs no support from § 83. This point was raised by the Petitioner and ignored by Oregon Tax Court. The Oregon Supreme Court's refusal to address this fact was another fundamental error.

Petitioner received correspondence from the IRS which stated that he was not required to file a tax return for certain years, some in common with those now in controversy, and years during which the Petitioner derived gross receipts from identical activity. The IRS Agent ("Patricia Wakefield") admitted under oath that, although she is inferior to Timothy Towns (Chief, IRS Compliance Division), her determination of liability was in direct conflict with his determination of non-liability based on Petitioner's reliance upon 26 USC 83. Refusal by the Oregon Supreme Court to cure this dichotomy between the Federal Government's posture and the Respondent's claims is a fundamental error, and it leaves the Petitioner with two distinctly separate and opposite interpretations of the very same statute.

Where, in the scenario detailed above, was the Petitioner allowed to access the law or to exercise his right to arrange his own affairs? Where was the Petitioner offered legitimate proof that he is wrong about the law that governs his relation with the taxing authorities? The Oregon Supreme Court did not so much render a decision that was erroneous as much as it approved of a clearly-erroneous "decision" of an administrative state tax court.

## SUMMARY OF ARGUMENTS

It is the Petitioner's fundamental right to arrange his own affairs to reduce his tax liability (see Gregory v. Helvering, 293 US 465 (1935)). This right includes taking advantage of all deductions not forbidden under the language of 26 USC (see Sharp v. U.S., 14

F.3d 583 (Fed.Cir. 1993)).

Congress, by enacting 26 USC 61, defined "gross income" to include all income from whatever source derived, *except* that which is excluded elsewhere in the Tax Code (see U.S. v. Burke, 504 US 229 (1992)). "[E]ach section of the Internal Revenue Code is not a self-contained whole, but rather a building block of a complex, interrelated statute." Raymond v. Hartman, 65 USTC 542 (1975). Petitioner has performed an accounting process whereby the amounts yielded from a transaction for the sale of personal services are divided into the categories of cost and of profit (or "gross income"). It is a process that permits only those amounts that are not deductible from gross income to be included therein. It is a simple process. The Tax Code does indeed define "income" and it does so through this process as it pertains to the Petitioner.

Title 26 USC 83 has been adopted as Oregon State Law (see Oregon Revised Statutes § 316.007). "Section 83(a) explains how property received in exchange for services is taxed." Montelepre Systemed, Inc. v. C.I.R., 956 F.2d 496, 498 [1] (CA5 1992). Section 83 applies to all compensation paid for services of corporations, and for the services of individuals (see 26 CFR 1.83-3(e), (f); MacNaughton v. C.I.R., 888 F.2d 418 (CA6 1989); Pledger v. C.I.R., 641 F.2d 287 (CA5 1981); Alves v. C.I.R., 734 F.2d 478, 481 (CA9 1984); Klingler Electric Co. v. C.I.R., 776 F.Supp. 1158, 1164 [1] (S.D.Miss. 1991); Robinson v. C.I.R., 82 USTC 444 (1984); Cohn v. C.I.R., 73 USTC 443, 446 (1979)).

Labor is Property (see Butcher's Union Co. v. Crescent City Co., 111 U.S. 746, 757 (1883); Slaughterhouse Case, 83 U.S. 395, 419 (1873); Adair v. U.S., 208 U.S. 161, 172 (1908); Coppage v. Kansas, 236 U.S. 1 (1915); *Black's Law Dictionary*, 6th ed., "property"). "In principle, there can be no difference between the case of selling labor and the case of selling goods." Adkins v. Childrens Hospital, 261 US 525, 558 (1922).

The language of 26 USC 83 permits only "the excess over the amount (if any) paid" for the Petitioner's compensation to be included in gross income. Regulation (see 26 CFR 1.83-3(g)) defines the "amount paid" as the "value of any money or property paid" for Petitioner's compensation.

In addition to the regulatory definition of cost, there is another prescription for the determination of cost which requires that 26 USC 1012 be applied to the Petitioner's transaction for the sale of personal services (see 26 CFR 1.83-4(b)(2)). Statute and regulation (see 26 USC 1011 and 26 CFR 1.1011-1) then assign a synonym to the term "cost" determined under § 1012, stating that the term "adjusted basis" implies that same cost. The adjusted basis, as defined under § 1011, is then to be deducted from the amount realized from the transaction, the amount left over being the taxable gain or "gross income" derived from the transaction (see 26 CFR 1.1001-1(a)).

Even if the lower court was correct in the claim that § 83 does not apply to Petitioner's compensation, he could have simply begun in § 1012 and follow its prescription for determining cost and its first implementing regulation embracing Petitioner's services as a cost to him when sold for compensation (see 26 CFR 1.1012-1(a)).

If Petitioner's compensation is excluded from the purview of § 83, the regulations thereunder cannot be proven to operate in any fashion other than that proposed by the Petitioner. If they are protective, Petitioner may seek to accept other forms of compensation to which § 83 does apply. They appear to protect somebody's compensation, and Petitioner has a right to qualify for such.

Contract value and fair market value are the same amount. Each are the yield of an arm's length transaction and the basis for a fair market value determination (see U.S. v. Cartwright, 411 U.S. 546, 552 (1973); Hicks v. U.S., 335 F.Supp. 474, 481 (Colo.1971); Pledger v. C.I.R., supra; 27 CFR 70.150(b); *Black's Law Dictionary*, 6th ed., "arm's length transaction"). Petitioner computes his

cost by assigning the fair market value to his services as his cost, and left with no way to deduct his services on a return, he deducts his services' fair market value. So now, Petitioner deducts those amounts placed by the text of the law into the category of cost, and does so with Congress' blessing (see 26 USC 212).

Title 26 USC § 6201(a) requires the Respondent to make a "determination" of tax liability. A lawful "determination" must include consideration and application of all applicable statutes (see Portillo v. C.I.R., 932 F.2d 1128, 1132 (CA5 1991); Scar v. C.I.R., 814 F.2d 1363, 1368, 1370 (CA9 1987); Carson v. U.S., 560 F.2d 693, 695-696 (CA5 1977)). Exaction of taxes without the requisite application of all applicable provisions is a violation of Petitioner's rights to due process of law guaranteed under the Fifth Amendment to the U.S. Constitution (see 26 CFR 601.106 (f)(1)).

By contradicting the Petitioner, by dishonoring the IRS' Compliance Division Chief's endorsement of Petitioner's claims under these provisions, by grasping at straws to deny the Petitioner a deduction for all property that is cost within the text of the law, the lower court is depriving the Petitioner of the provisions of §§ 83, 212, 1001, 1011 and 1012.

This Court has held over and over again that taxes must be imposed by clear and unequivocal language (i.e., statutory text). The courts must give effect to the meaning of the statutes as written, and whenever the meaning of a tax law is doubtful, the doubt is always to be resolved in favor of whom upon which the tax is sought to be laid (see Spreckles Sugar Refining v. McClain, 192 U.S. 397, 416 (1904); Gould v. Gould, 245 U.S. 151, 153 (1917); Smietanka v. First Trust & Savings Bank, 257 U.S. 602, 606 (1922); Lucas v. Alexander, 279 U.S. 573, 577 (1929); Crooks v. Harrelson, 282 U.S. 55 (1930); Burnet v. Niagra Falls Brewing Co., 282 U.S. 648, 654 (1931); Miller v. Standard Nut Margarine Co., 284 U.S. 498, 508 (1932); Gregory v. Helvering, supra, at 469 (1935); Hassett v.

Welch, 303 US 303, 314 (1938); U.S. v. Batchelder, 442 U.S. 114, 123 (1978)).

## CONCLUSION

Did Petitioner get the review he was promised for having prepaid the assessment to access Oregon Tax Court? Can the Petitioner now arrange his affairs according to law when the law remains a secret? Where is the decision that says 26 USC 83 does not apply to Petitioner's compensation, and how does that case differ from all of the decisions to the contrary? When excluding from cost that property within which Petitioner has no basis, upon what statutory provision does the Respondent rely? Why was the Petitioner penalized for bringing up his rights to property? Is the term "property" understood to exclude labor? Why is every case under 26 USC 83 brought by the seller of labor turned into such a fiasco and bloodletting on each and every State- and Federal-court level?

Of those people with knowledge of Petitioner's present affairs, Petitioner knows of nobody who views this situation as anything but absurd, capricious, and is exactly the picture of what people don't like about government today in America. After more than two years of litigation, Petitioner still can find no justification for having to petition a Court that, God knows, has more important things to do than to inform a State agency that is wrong to keep the law a secret. More importantly, Petitioner is well aware of the problems facing the individual should he dare to educate himself about the law. This scares and profoundly disappoints the Petitioner to see his and his children's Citizenship rapidly losing value before his very eyes.

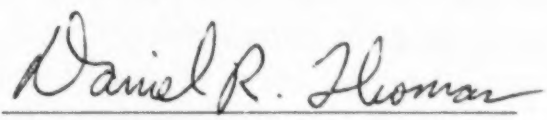
## PRAYER FOR RELIEF

IN RELIEF, Petitioner prays that this Honorable Court will grant certiorari for the lower court's having erred in the ways described, that discussion of governing federal provisions, and the language thereof, was insufficient to make whole the Petitioner in his fundamental right to arrange his own affairs and to have his taxes imposed by clear and unequivocal language.

IN THE ALTERNATIVE, due to the nature of this controversy involving federal legislation merely adopted as Oregon State law, and due to the already-proven standard within the federal and state judiciary to sanction the innocent and good-faith believer in statutory language, Petitioner would sincerely prefer that this Court decide the issues raised, thus affording both the state- and the federal-income taxpayer the same desparately-needed instruction.

Date: July 2, 1998

Respectfully submitted,



Daniel R. Thomas
Petitioner, *pro se*
3521 Seaford Lane
Casselberry, FL 32707

## CERTIFICATE OF SERVICE

I, the undersigned, do hereby certify that I sent the original plus 39 copies of the attached *Petition for Writ of Certiorari*, along with a money order for $300.00, by mailing via first class mail deposited in the United States Post office at Casselberry, Florida on July 2, 1998 in a sealed box, postage prepaid addressed to:

Clerk of Court
U.S. Supreme Court
1 First St. NE
Washington, DC 20543

I also sent 3 copies, by mailing via first class mail deposited in the United States Post office at Casselberry, Florida on the same date in a sealed envelope, postage prepaid addressed to:

Jerry Bronner
Oregon Dept. of Justice
1162 Court St. NE
Salem, OR 97310

Daniel R. Thomas

Filed: February 12, 1998

IN THE SUPREME COURT OF THE STATE OF OREGON

DANIEL R. THOMAS,

Appellant,

v.

DEPARTMENT OF REVENUE,

Respondent.

(OTC 3912; SC S44146)

On appeal from the Oregon Tax Court.*

Carl N. Byers, Judge.

Submitted on record and briefs December 31, 1997.

Daniel R. Thomas, pro se, filed the briefs.

Jerry Bronner, Assistant Attorney General, Salem, filed the brief for respondent. With him on the brief was Hardy Myers, Attorney General.

Before Carson, Chief Justice, Gillette, Van Hoomissen, Graber, and Durham, Justices.**

GILLETTE, J.

The judgment of the Tax Court is affirmed.

*14 OTR 136 (1997).

**Fadeley, J., retired January 31, 1998, and did not participate in this decision; Kulongoski, J., did not participate in the consideration or decision of this case.

GILLETTE, J.

In this appeal from a judgment entered in the Oregon Tax Court, the underlying issue is whether taxpayer, a physician, is required to report as "income," for purposes of Oregon income tax, money that he earned for his work as a doctor. Taxpayer argues that he does not have to report such money as income, because his labor - - i.e., the services that he performed in return for that money - - is a deductible expense whose value is equal to what he was paid for it. Once that "expense" is deducted, he reasons, he is left with no net income. Thus, he concludes, he owes no tax.

The Tax Court took a contrary view on that issue. On cross-motions for summary judgment, it awarded summary judgment to defendant Department of Revenue (the department). Finding that taxpayer's arguments were "groundless and contrary to established law," the Tax Court also awarded the department $5,000 in damages, pursuant to ORS 305.437 (1993).[1] The Tax Court entered judgment accordingly, and the taxpayer appealed to this court.

In this court, taxpayer raises a total of 30 "questions" under 13 "issues" that he claims are presented by the decision of the Tax Court. A systematic review of each of taxpayer's arguments,

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[1] At the time of the Tax Court's decision, ORS 305.437 (1993) provided:

"Whenever it appears to the Oregon Tax Court that proceedings before it have been instituted or maintained by a taxpayer primarily for delay or that the taxpayer's position in such proceeding is frivolous or groundless, damages in an amount not to exceed $5,000 shall be awarded to the Department of Revenue by the Oregon Tax Court in its judgment."

The 1995 legislature amended ORS 305.437, effective September 1, 1997. Or Laws 1995, ch 650, § 6a. That amendment plays no role in our decision in this case.

followed by an explanation as to why each is groundless, would not benefit the public, the bench, or the bar. We hold that the Tax Court did not err, either in granting summary judgment to the department or in awarding it $5,000 in damages pursuant to ORS 305.437 (1993).

The judgment of the Tax Court is affirmed.

IN THE SUPREME COURT OF THE STATE OF OREGON

| | | |
|---|---|---|
| DANIEL R. THOMAS, | ) | Tax Court No. 3912 |
| | ) | |
| Plaintiff-Appellant, | ) | |
| | ) | SC S44146 |
| v. | ) | |
| | ) | |
| DEPARTMENT OF REVENUE, | ) | |
| | ) | ORDER DENYING |
| Defendant-Respondent. | ) | RECONSIDERATION |

The court has considered the petition for reconsideration and orders that it be denied.

Dated this 7th day of April, 1998.

WALLACE P. CARSON JR.
CHIEF JUSTICE

Kulongoski and Leeson, JJ., not participating.

c: Daniel R. Thomas
Jerry Bronner

IN THE OREGON TAX COURT

Income Tax

No. 3912

| | |
|---|---|
| DANIEL R. THOMAS, | ) |
| | ) |
| Plaintiff, | ) |
| | ) |
| v. | ) |
| | ) |
| DEPARTMENT OF REVENUE, State of Oregon, | ) |
| | ) |
| Defendant. | ) |

ORDER

Plaintiff (taxpayer) failed to file a personal income tax return for the 1992 tax year. Based on information available to it, the Department of Revenue (department) assessed income taxes, from which taxpayer appeals. Taxpayer claims he had no taxable income during 1992 because his labor is a deductible form of property. The matter is before the court on cross motions for summary judgment.

Taxpayer is a medical doctor and conducts an active osteopathic practice in Lake Oswego. He claims that IRC section 83[1] allows him to deduct the value of his labor from his gross income. That section provides:

> "(a) If, in connection with the performance of services, property is transferred to any person other than the person for whom such services are performed, the excess of-

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[1] All federal statutory and regulatory references are to the 1992 provisions.

"(1) the fair market value of such property * * * over
"(2) the amount (if any) paid for such property,

shall be included in the gross income of the person who performed such services * * * ."

Taxpayer contends that his labor is an "amount paid" under section 83 and should be deducted accordingly. In other words, exchanging his services for money is merely an exchange of properties of equal value.

At oral argument, the court pointed out that taxpayer's contention is inconsistent with both federal and state income tax systems. Nevertheless, taxpayer maintained that he is not a tax protester and is relying upon the language in the statutes and regulations to support his position. He indicated that he will remain in defiance of the government's position until his demands for an explanation of why or how the statutes do not apply.

By focusing on whether his labor constitutes an "amount paid" under section 83, taxpayer fails to consider whether the section applies in the first instance. For section 83 to apply, "property" must have been transferred to taxpayer, or some third party, in exchange for the services taxpayer performs. The regulations define property to include "real and personal property other than either money or an unfunded and unsecured promise to pay money or property in the future." Treas Reg § 1.83-3(e) (emphasis added). Taxpayer does not claim he received anything other than money in return for his services. Because money does not constitute "property" under section 83, this section does not apply to taxpayer.

Even if taxpayer received property in exchange for his services, he is not entitled to deduct his services as an "amount paid" for such property. The term "amount paid" includes only "the value of any money or property paid for the transfer of property to which

section 83 applies." Treas Reg § 1.83-3(g). Since services are not property by definition, they are not considered as part of the amount paid and therefore not deductible.

Despite the above language, taxpayer claims that services constitute property under IRC section 1012 and the accompanying regulations. However, section 1012 applies only if property to which section 1.83-1 applies is transferred. Section 1.83-1 is not applicable because taxpayer received money for his services. Therefore, section 1012 does not apply.

Even if section 1012 applied, that section does not include services as part of the cost basis of property. Regulation section 1.1012-1(a) states:

> "In general, the basis of property is the cost thereof. The cost is the amount paid for such property in cash or other property."

The illogic and misfit of taxpayer's position becomes obvious in light of the cases which have applied IRC section 1012. Under those cases, if a person receives property in exchange for services but does not report the value of such property as income, the entire amount received on a subsequent sale of the property is taxable because the property has a zero cost basis. Commission v. Farren, 36-1 USTC (CCH) ¶ 9095, 82 F2d 141 (1936). The United States Tax Court has expressly held that services are not part of basis. See Borg v. Commissioner, 50 TC 257 (1968).

Addressing the specific point raised by taxpayer, the federal under section 83. In Santangelo v. Commissioner, 70 TCM (CCH) 878 (1995), the petitioner made similar arguments to what taxpayer is making here. There, the court noted:

> "The crux of petitioner's position is that wages are not income, apparently because of the provisions of sections 83 and 7701(e) and the notion that a person's labor is property in

which the person has a basis equal to its fair market value." Id. at 879.

The court characterized the petitioner's position as "nothing but tax protester rhetoric and legalistic gibberish." Id. at 881. The court went on to hold:

> "We see no need to catalog petitioner's arguments regarding section 83, or section 7701(e) for that matter, and painstakingly address them. As the Court of Appeals for the Fifth Circuit has remarked: 'We perceive no need to refute these arguments with somber reasoning and copious citation of precedent; to do so might suggest that these arguments have some colorable merit' * * * Petitioner's arguments are nothing other than a variation on the theme that wages are not income. Suffice it to say that both this and other Federal courts have consistently and uniformly held for many years that wages are income and that a taxpayer has no basis in his or her labor." Id (citations omitted).

See also Olson v. US, 760 F2d 1003, 85-1 USTC (CCH) ¶ 9401 (9th Cir 1985) (argument that the taxpayer could deduct his wages as a cost of labor was frivolous); Herzog v. Commissioner, 43 TCM (CCH) 807 (1982) (compensation for services is included in gross income; labor is not property being sold)

Taxpayer claims that IRC section 7852(a), the separability clause, prevents this court from relying on prior court decisions in his case. However, perhaps because taxpayer is not a lawyer, he fails to understand the nature of the judicial process. Prior case decisions, i.e., precedent, is an important aspect of judicial decision making and reasoning. Following and considering the holdings of prior decisions is necessary for the consistent application of laws. In any case, the language of section 7852(a) does not require what taxpayer contends. That section provides:

> "If any provision of this title, or the application thereof to any

person or circumstances, is held invalid, the remainder of the title, and the application of such provision to other persons or circumstances, shall not be affected thereby."

This statute simply provides that, should a court hold any provision or application invalid, the remaining provisions or the application of the same provision to other circumstances continues in effect. The invalid provision or application is separated out. The statute says nothing about the ability of courts to use prior court decisions as guides for determining whether a particular statute applies in a similar circumstance.

In summary, section 83 does not permit taxpayer to deduct his labor because taxpayer received money, not property for his services. Further, in any case, labor is not property that is deductible from compensation received.

In its answer, the department asserted that taxpayer's position was frivolous and groundless and requested an award of damages pursuant to ORS 305.437.[2] This provision permits the court to award up to $5,000 in damages to the department if a taxpayer's position is frivolous or groundless. The court finds that taxpayer's position is groundless and contrary to established law. Despite the fact that taxpayer was presented with such information, he has continued to persist in maintaining his position. Accordingly, the court will award the department damages in the amount of $5,000.

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[2] ORS 305.437 provides:

"Whenever it appears to the Oregon Tax Court that proceedings before it have been instituted or maintained by a taxpayer primarily for delay or that the taxpayer's position in such proceeding is frivolous or groundless, damages in an amount not to exceed $5,000 shall be awarded to the Department of Revenue by the Oregon Tax Court in its judgment."

At oral argument on the motions for summary judgment, taxpayer submitted a signed 1992 income tax return showing his labor as an expense. By subsequent letter to the court, the department indicated that taxpayer's return is not acceptable, even if labor expense is disallowed. Thus, there is a dispute of material fact that precludes final resolution of the matter by summary judgment. However, the court has decided the primary legal issue. It is appropriate to enter an order ruling on that issue. Any remaining issues not resolved by agreement of the parties shall be scheduled for an evidentiary hearing. Now, therefore,

IT IS ORDERED that taxpayer's Motion for Summary Judgment is denied, and

IT IS FURTHER ORDERED that the department's Motion for Summary Judgment is granted to the extent of determining that taxpayer was required to file a 1992 personal income tax return and that taxpayer's labor is not a deductible business or personal expense.

Dated this 17th day of October, 1996.

Carl Byers
JUDGE

IN THE OREGON TAX COURT

Income Tax

No. 3912

| | |
|---|---|
| DANIEL R. THOMAS, | ) |
| | ) |
| Plaintiff, | ) |
| | ) |
| v. | ) |
| | ) |
| DEPARTMENT OF REVENUE, State of Oregon, | ) |
| | ) |
| Defendant. | ) |

JUDGMENT

This matter came on for trial on January 29, 1997, in Salem, taxpayer appearing pro se and defendant represented by Mr. Jerry Bronner, Assistant Attorney General. At conclusion of trial, the court took the matter under advisement. After considering the evidence, the court rendered its opinion on February 13, 1997, finding that taxpayer owed additional income taxes. In accordance with the court's opinion and Tax Court Rule 65, the department recalculated the taxes, penalties, and interest due and submitted those calculations to the taxpayer and the court. The taxpayer submitted his objections, but the court determined that the department's calculation is correct. Also, by its Order dated October 17, 1996, the court determined that the taxpayer's position was frivolous and groundless and awarded the department damages in the amount of $5,000 in accordance with ORS 305.437. Now, therefore,

IT IS ADJUDGED AND DECREED that defendant is awarded damages against plaintiff in the amount of $5,000 in accordance with ORS 305.437.

IT IS FURTHER ADJUDGED AND DECREED that the following money judgment is awarded:

MONEY JUDGMENT

| | |
|---|---|
| Creditor: | Department of Revenue |
| Creditor's Attorney: | Jerry Bronner |
| Debtor: | Daniel R. Thomas |
| Amounts: Taxes, Penalties, and Interest | $13,000 plus interest of $2.77 per day from February 20, 1997, until paid. |
| Statutory Damages: | $5,000 plus interest at the statutory rate from the date of entry of the Judgment, until paid. |

Dated this 6th day of March, 1997.

Carl Byers
JUDGE